

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MARION CHAD SPEARS

APPELLANT

VS.

NO. 2010-KA-2059

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE FACTS

On August 14, 2009, Laurie Goodin and Laurel Lee Bell were working as secretaries for B&G Wood Products, Inc. issuing checks to loggers who were selling their timber to the company. (Transcript p. 37-39). The Appellant, Marion Chad Spears, came in, approached Laurel's window, and handed her a note. (Transcript p. 39-40 and 61). Laurel read the note and handed it to Laurie. (Transcript p. 40 and 62). The note basically stated that Spears wanted them to write him checks in the amount of \$15,000 or he would kill them. (Transcript p. 40 and 61). Laurie told Laurel to do whatever she needed to do to get him out of the store. (Transcript p. 40 and 62). Laurel, who was only filling in for her mother for the day, was unable to get the computer to work. (Transcript p. 41 and 62). Meanwhile, Spears repeatedly told the ladies that if they messed up, he would kill them. (Transcript p. 41 and 62). Finally, Laurel told Laurie that she could not do it and Laurie, at Spears's request, began trying to issue a check to herself. (Transcript p. 42). The entire time Spears whispered to her that he would kill them if they messed up. (Transcript p. 42).

After Laurie issued the check to herself, Spears told her that she was going with him to the bank to cash the check. (Transcript p. 43). He again told her that if she messed up, he would kill

her. (Transcript p. 46). He also told Laurel that if she told anyone what they were doing, he would kill Laurie. (Transcript p. 65). They got into Laurie's car and she drove to the bank. (Transcript p. 45-46). Spears followed her inside the bank and stood beside her as she cashed the check. (Transcript p. 47-48). The teller handed Laurie \$15,000 in cash and she and Spears left the bank. (Transcript p. 50). He told her to get back in the car and drive down to Highway 19. (Transcript p. 50). He directed her to drive down a dirt road and told her to stop the car and get out. (Transcript p. 52). She did and he drove away in her car with the \$15,000. (Transcript p. 53). She ran to a nearby house and called her boss. (Transcript p. 54).

Spears was later found in Adamsville, Alabama. (Transcript p. 97). Two officers from the Philadelphia Police Department traveled to Adamsville to interview Spears where he confessed to the crimes. (Transcript p. 130-131 and Exhibit S-3).

Spears was charged with kidnapping, robbery, and carjacking. He was tried and convicted of all three charges. He was sentenced as a habitual offender to serve fifteen years for each conviction with the sentences to run consecutively.

Spears filed an appeal raising one issue with regard to the robbery conviction. He also submitted a memorandum pursuant to the holding of *Lindsey v. State*, 939 So.2d 743 (Miss. 2005) with regard to the other convictions.

SUMMARY OF THE ARGUMENT

Spears's convictions and sentences should be affirmed. Spears raised only one issue on appeal and that issue is procedurally barred as it was not specifically presented to the trial court. Furthermore, the issue is without merit as the evidence presented at trial clearly establishes each element of robbery.

As no other issues were presented for review and as Mississippi law establishes that the

judgment of the trial court is presumed correct, Spears's remaining convictions and sentences should also be affirmed. However, after reviewing the record, should this Court find that there is an arguable issue and thereafter order Spears's counsel to file a supplemental brief, the State will promptly respond to said brief.

ARGUMENT

SPEARS IS PROCEDURALLY BARRED FROM ARGUING THAT HE WAS IMPROPERLY CONVICTED OF ROBBERY AS HE NEVER RAISED THE ISSUE BEFORE THE TRIAL COURT.

Spears claims that "he was improperly charged and convicted of robbery and that he was instead guilty of grand larceny." (Appellant's Brief p. 2). This argument was never specifically placed before the trial court and is, therefore, procedurally barred. *See Mack v. State*, 784 So.2d 976 (Miss. Ct. App. 2001) (citing *Gardner v. State*, 531 So.2d 805, 808-09 (Miss.1988)).

Without waiving the procedural bar, the State would also assert that the issue is without merit. Mississippi Code Annotated §97-3-73 states that "every person who shall feloniously take the personal property of another in his presence or from his person and against his will, by violence to his person or by putting such person in fear of some immediate injury to his person, shall be guilty of robbery." This is exactly what Spears did. Laurie testified that she wrote the check, left with Spears, and cashed the check because of the threats he made. She further testified that she was put in fear as a result of his threats. Additionally, Spears admitted that he took the money. The evidence presented at trial fully supports a robbery conviction.

THE STATE'S RESPONSE TO MARION SPEARS'S LINDSEY MEMORANDUM WITH REGARD TO THE REMAINING COUNTS.

Spears's counsel asserts that he had searched the record thoroughly and found "no arguable issues supporting [Spears's] appeal" other than the one presented above. (Appellant's Brief p. 3).

After specifically listing the matters he considered, Spears's counsel also requested that Spears be allowed an additional 20 days to file a pro se brief should he so desire. (Appellant's Brief p. 3). No such brief has been filed.

It is well established that the judgment of the trial court is presumed correct. *Moore v. State*, 914 So.2d 185, 189 (Miss. Ct. App. 2005). Because no issues other than the one addressed above have been presented for review, the State rests on that presumption and respectfully submits that no further argument on its part is required at this time. However, after reviewing the record, should this Court find that there is an arguable issue and thereafter order Spears's counsel to file a supplemental brief, the State will promptly respond to said brief.

CONCLUSION

For the foregoing reasons, the State of Mississippi respectfully requests that this Honorable Court affirm Marion Chad Spears's convictions and sentences.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

A handwritten signature in cursive script, appearing to read "Stephanie B. Wood", written over a horizontal line.

STEPHANIE B. WOOD

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CERTIFICATE OF SERVICE

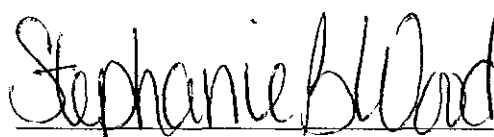
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 14th day of September, 2011.



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